In the High Court of Judicature at Madras

Dated: 28/08/2002

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The Honourable Mr.Justice R.Jayasimha Babu
and
The Honourable Mr.Justice K.Raviraja Pandian

Tax Case No.596 of 1995 and Tax Case No.597 of 1995

M/s.Tarapore & Co.,
Madras. ..... Applicant

-Vs-

The Commissioner of Income-tax,
Tamilnadu IV, Madras. ..... Respondent

References made under Section 256(1) of the Income-tax Act, 1961 by the Income-tax Appellate Tribunal, C Bench, Madras, in RAs. No.592 and 593/Mds/1992 in ITAs No.2059 & 2060/Mds/1988 for the assessment year 1980-81 and 1981-82.

!For Applicant : No appearance

For Respondent : Mr.T.Ravikumar,
Jr. Standing Counsel for IT

:JUDGMENT

(Judgment of the Court was delivered
by R.Jayasimha Babu, J.)
The question referred to us at the instance of the assessee is,
"Whether on the facts and in the circumstances of the case, the Tribunal is right in law in holding that the receipts from service charges are liable to be assessed as income from "other sources" and not income from house property?"

2. The assessee owned a plot known as 'Dhun building' at Mount Road, Madras, which had been let out and from which he realised rental income. The assessee also received certain sum from the tenants as service charges which were not regarded as part of rent, but as representing the value of the services provided by the assessee to his tenants. The assessee claimed that those service charges also should be assessed under the head 'income from house property'. It was not in dispute that it was only the amount of the rent received by the assessee which was taken into account for computing the

annual value of the building for the purpose of levy of tax.

3. The amount realised by the assessee towards service charges was assessed by the Income-tax Officer under the head 'income from other sources'. The assessee's appeal to the Commissioner was successful, but was short-lived. The Tribunal, on furt appeal, restored the order of the assessing officer.

4. Section 22 of the Income-tax Act deals with income from house property which is to be computed with reference to the annual value of the property. The mode of determining that annual value is set out in Section 23. Section 23 (1)(a) deems annual value of the property to be the sum for which the property might reasonably be expected to let from year to year. Clause (b) deems the actual rent received or receivable by the owner to be the annual value if that sum is in excess of the sum referred to in clause (a). Explanation (1) to Section 2 3 defines 'annual rent' for the purpose of that sub section. That explanation reads as under:
Explanation 1: For the purpose of this sub-section 'annual rent' means,
(a) in a case where the property is let through out the previous year, the actual rent received or receivable by the owner in respect of such year; and
(b) in any other case the amount which bears the same proportion to the amount of the actual rent, received or receivable by the owner for the period for which the property is let, as the period of twelve months bears to such period."

5. The annual rent in case where the property is let through out the year is the actual rent received or receivable by the owner. When the amount of the actual rent received or receivable by the owner is known, that would constitute the basis for determining the annual value and it is that value which will have to form the basis for determining the income from house property and for allowing the deduction from income from house property to the extent permitted under the other provisions of the Act.

6. In making such computations, there is no room for adding other amounts received by the owner of the building as representing the value of the service charges rendered by him to his tenants as income from house property, when neither the tenant nor the owner intended payment of such service charges to be a part of rent payable for the occupation of the premises by the tenants.
7. The question referred to us is answered in favour of the revenue and against the assessee.

(R.J.B.,J.) (K.R.P.,J.)
Index : Yes

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Copies to

1. The Assistant Registrar,
Income-tax Appellate Tribunal,

Rajaji Bhavan, Besant Nagar,
Chennai 600 090. (Five copies with records)

2. The Secretary,
Central Board of Direct Taxes,
New Delhi. (Three copies)

3. The Commissioner of Income-tax,
Tamil Nadu IV, Madras.

4. The Commissioner of Income-tax (Appeals III),
Madras 34.

5. The 9th Income-tax Officer,
City Circle V, Madras 34.

6. The 1st Income-tax Officer,
City Circle, Madras 34.